

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 271 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and  
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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COMMISSIONER OF INCOME TAX

Versus

H H MAHARAJA FAMILY TRUST NO.1

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Appearance:

MR RP BHATT for Petitioner  
MR MANISH R BHATT for Respondent No. 1

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CORAM : MR.JUSTICE R.BALIA. and  
MR.JUSTICE A.R.DAVE

Date of decision: 06/04/99

ORAL JUDGEMENT

#. The Income Tax Appellate Tribunal, Ahmedabad Bench C has referred the following two questions of law for the opinion of this Court:

"whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the provisions of Section 60 of the Income-tax Act, 1961 were not applicable to the facts of the case?

2. Whether in the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the interest income earned by the beneficiaries of the assessee trust were not liable to be included in the income of the assessee trust on the principle of constructive receipt?

#. The reference relates to two assessment years 1979-80 and 1980-81. Similar questions arising out of assessment of assessment years 1976-77 and 1978-79 were made subject matter of ITR 252 of 1983 at the instance of CIT. The said reference has been decided by this Court on 7.1.1997. The court held that the investments were made by the beneficiaries in their own right and not as the agents of the assessee trust. Therefore, the income derived by the beneficiaries from their own investments could not be regarded as income received by or on behalf of the trustees. In our view therefore, the Tribunal rightly held that the principle of constructive receipt could not be invoked by the revenue authority for justifying its stand to include the interest income earned by the beneficiaries in the hands of the trustees. The court further held that the interest income did not accrue to beneficiaries by virtue of the transaction of the loan, but it accrued to them by virtue of subsequent transactions of their having invested the amounts. It is therefore clear that the provisions of Section 60 of said Act could not have been invoked by the revenue for assessing the income of the beneficiaries in the hands of the assessee trust. The Tribunal was therefore justified in holding that the provisions of Section 60 were not applicable to the facts of the present case.

#. In the facts and circumstances of the present case, this Court answered both the questions in affirmative in favour of the assessee and against the revenue. Following the aforesaid decision, this court in assessee's own case relating to earlier years, we answer the aforesaid two questions referred to us in the affirmative in favour of the assessee and against the revenue.

Reference stands accordingly disposed of with no order as to costs.

(Rajesh Balia, J) (A.R. Dave, J)